

§ 429.116

part; except that in addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and the manufacturer shall also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

§ 429.116 Additional certification testing requirements.

Pursuant to § 429.102(b)(2), if DOE determines that independent, third-party testing is necessary to ensure a manufacturer's compliance with the rules of this part, part 430, or part 431, a manufacturer must base its certification of a basic model under subpart B of this part on independent, third-party laboratory testing.

§ 429.118 Injunctions.

If DOE has reason to seek an injunction under the Act:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of the prohibited act at issue and DOE's intent to seek a judicial order enjoining the prohibited act unless the manufacturer, private labeler or other person, delivers to DOE within 15 calendar days a corrective action and compliance plan, satisfactory to DOE, of the steps it will take to ensure that the prohibited act ceases. DOE will monitor the implementation of such plan.

(b) If the manufacturer, private labeler or any other person as required, fails to cease engaging in the prohibited act or fails to provide a satisfactory corrective action and compliance plan, DOE may seek an injunction.

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) of this part may be subject to assessment of a civil penalty of no more than \$200 for each violation. As to § 429.102(a)(1) with respect to failure to certify, and as to § 429.102(a)(2), (5) through (9), each unit of a covered product or covered equipment distributed in violation of such paragraph shall constitute a separate violation. For violations of § 429.102(a)(1), (3), and (4), each day of

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noncompliance shall constitute a separate violation for each basic model at issue.

§ 429.122 Notice of proposed civil penalty.

(a) The General Counsel (or delegatee) shall provide notice of any proposed civil penalty.

(b) The notice of proposed penalty shall:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3) Inform the person of the opportunity to elect in writing within 30 calendar days of receipt of the notice to have the procedures of § 429.128 (in lieu of those of § 429.126) apply with respect to the penalty.

§ 429.124 Election of procedures.

(a) In responding to a notice of proposed civil penalty, the respondent may request:

(1) An administrative hearing before an Administrative Law Judge (ALJ) under § 429.126 of this part; or

(2) Elect to have the procedures of § 429.128 apply.

(b) Any election to have the procedures of § 429.128 apply may not be revoked except with the consent of the General Counsel (or delegatee).

(c) If the respondent fails to respond to a notice issued under § 429.120 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.126.

§ 429.126 Administrative law judge hearing and appeal.

(a) When elected pursuant to § 429.124, DOE shall refer a civil penalty action brought under § 429.122 of this part to an ALJ, who shall afford the respondent an opportunity for an agency hearing on the record.

(b) After consideration of all matters of record in the proceeding, the ALJ will issue a recommended decision, if appropriate, recommending a civil penalty. The decision will include a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.